

## Independent Arbitration for Customers

### Co-operative funeralcare crematoria and masonry businesses

#### Funeral Services Limited (FSL)

#### 1 Introduction

- 1.1 The Independent Arbitration Scheme for Customers (the Scheme) is an arbitration scheme that applies to claims by customers for compensation or any other remedy against crematoria and masonry businesses owned and operated by co-operative funeralcare. It is administered independently by the Centre for Effective Dispute Resolution (CEDR).
- 1.2 The service does not apply to claims for compensation exceeding £10,000, or to claims concerning physical injury, illness or nervous shock or their consequences.
- 1.3 The customer must confirm on the application form that every reasonable effort has been made to resolve the dispute through the co-operative's own complaints procedure.
- 1.4 The service is designed for use without the need for legal representation. However, any party may choose to be legally represented, but must do so at their own cost which may not be recovered within the service or any subsequent legal action.
- 1.5 Any arbitration under the scheme will be conducted under the provisions of the Arbitration Act 1996 (the Act) and these rules. For the purposes of the Act, the law of England and Wales shall apply to the arbitration and all

arbitrations under these rules will be deemed to take place in London.

## **2 Commencement of arbitration proceedings**

- 2.1 If the customer wishes to proceed to arbitration then an application must be submitted to CEDR on its application form, accompanied by the appropriate registration fee, as specified in Schedule One to these Rules, and by the documents and supporting materials “the claim”. Applications forms are available from CEDR and the CEDR website.
- 2.2 Where the customer wishes to proceed to arbitration the co-operative is bound to proceed. The respondent is required to pay a separate registration fee, (as specified in Schedule One to these Rules), to the administrator when submitting their defence to the claim.
- 2.3 Registration fees are non-returnable except as provided for in Rule 2.5 and Rule 4.6 (b).
- 2.4 The arbitration commences when the administrator writes to the parties telling them that the customer’s application has been accepted.
- 2.5 On receipt of all forms, fees, evidential documents and / or materials from the parties, the administrator will appoint an arbitrator from the panel it maintains for the purpose and inform the parties of the arbitrator’s name.
- 2.6 If the arbitrator believes that the dispute is not capable of proper resolution under these rules, the parties will be so advised. In that case the arbitrator’s appointment shall be cancelled, the application for arbitration treated as withdrawn and the registration fees shall be refunded. The parties will then be able to pursue the matter either through other appropriate arbitration rules provided by the administrator or through the courts.

- 2.7 Once appointed, the arbitrator will communicate with or issue directions to the parties through the administrator. Correspondence with the arbitrator must be copied to all parties.

### **3 Arbitration procedure**

- 3.1 The arbitrator shall have the jurisdiction and power to direct the procedure of the arbitration including the amendment of any time limits and other procedural requirements. The arbitrator shall also have the power to:

- (a) Allow submission of further evidence and the amendment of claim or defence;
- (b) Order the parties to produce goods, documents or property for inspection;
- (c) Conduct such enquiries as may appear to the arbitrator to be desirable;
- (d) Receive and take in to account any oral or written evidence as the arbitrator shall decide to be relevant;
- (e) Appoint an expert to report on specific issues or take legal advice. Any expert will be appointed by the arbitrator from a Panel put forward by the National Association of Funeral Directors Chief Executive, and fees for the expert will be limited to a maximum of £250 plus VAT, such fees to be paid through CEDR by the co-operative;

- (f) Award interest, whether or not claimed;
  - (g) Proceed with the arbitration if either party fails to comply with these rules or with the arbitrator's directions, or if either party fails to attend any meeting or inspection ordered by the arbitrator but only after giving that party written notice;
  - (h) Terminate the arbitration if the arbitrator considers the case to be incapable of resolution under the service, or if the parties settle their dispute prior to an award. If the case is settled the parties must immediately inform the administrator in writing of the terms of the settlement and the arbitrator shall record them in an agreed award enforceable under the Arbitration Act 1996, if requested.
  - (i) Order the customer to pay the co-operative for outstanding fees.
- 3.2 In addition to the powers conferred by these rules, the arbitrator shall have the widest discretion permitted by law to resolve the dispute in a just, speedy, economical and final manner and in accordance with natural justice.
- 3.3 The arbitration will normally proceed on the basis of written argument and evidence, which must be submitted in duplicate and in accordance with the following procedure. However, if either party requests it and / or if the arbitrator considers it appropriate, a meeting or inspection may be held. Any such meeting or inspection shall be made in the presence of both parties who may be questioned by the arbitrator in order to clarify matters in dispute.
- 3.4 A copy of the claim documents will be sent by the administrator to the

Funeral Director, who then has 15 working 21 days in which to submit a written defence.

- 3.5 The administrator will send a copy of the defence documents to the customer, who is entitled to submit written comments within a further 10 working days. Such comments must be restricted to points arising from the co-operative's defence. The customer may not introduce any new matters or new points of claim.
- 3.6 The administrator will send a copy of the customer's comments to the co-operative and the co-operative may provide a response in accordance with Rule 4.5. No further comments can be made following the co-operative's response, without the arbitrator's express approval.
- 3.7 If the parties have previously attempted to resolve their dispute using conciliation, statements of claim and defence used in conciliation may be submitted or they may be added to or amended. In addition the arbitrator may request further relevant information or other evidence from the parties.
- 3.8 The arbitrator will make an award with reasons, normally within 20 working days of appointment, after considering all submissions and evidence.
- 3.9 Unless otherwise directed, any amount awarded shall be paid within 15 working days of dispatch of the award to the parties. Such payments shall be made direct to the party entitled to receive it, which may include a payment from the customer to the co-operative for outstanding fees.

3.10 Any award made under this scheme is final and legally binding on all parties, subject to either party's right under the provisions of the Act to seek leave to appeal in the courts.

3.11 Any party may request the return of its original documents but must do so within 30 working days of the date of dispatch of the award, after which date CEDR will destroy them.

#### **4 Content of submissions for arbitration**

4.1 The claim shall include:

- (a) The nature and basis of the claim;
- (b) The amount of compensation claimed or other remedy sought;
- (c) All supporting documents relied on as evidence, in duplicate.

4.2 An award cannot be made for any amount that is more than the total amount claimed on the application form.

4.3 If the customer is unable to submit a copy of any original contract or order, the co-operative shall submit a copy of that document with the defence, if it existed.

4.4 The defence shall include:

- (a) What matters in the opposing documents are accepted or agreed;
- (b) What matters are disputed, with reasons why;

- (c) Details of any outstanding amounts which remain unpaid by the customer, and any associated counterclaim for such amounts;
- (d) Any supporting documents relied on as evidence in support of their response.

4.4 The response by the customer to any defence shall include:

- (a) What matters in the opposing documents are accepted or agreed;
- (b) What matters are disputed, with reasons why;
- (c) Any supporting documents relied on as evidence in support of such response.

4.5 The administrator will send a copy of the customer's response to the co-operative, who may within 5 working days, comment on any new content, evidence or claim contained within it.

4.6 If any party fails to deliver anything required by these rules and does not supply it within 5 working days of a reminder by the administrator then:

- (a) Where a claim is not delivered in accordance with Rule 4.1 it shall be deemed to be abandoned;
- (b) Where a claim is abandoned the arbitration will not proceed and the customer's registration fee will be refunded;
- (c) Where the failure concerns information requested by the arbitrator, the arbitration shall proceed as the arbitrator considers appropriate;

- (d) Where the failure is the non-delivery of the defence, the arbitrator may make the award on the basis of documents already received.

## **5 Arbitration costs**

- 5.1 The registration fees, paid by the customer and the co-operative, include the arbitrator's fees and CEDR's administration costs (save for expenses which are paid in addition at reasonable cost). The co-operative pays the fees of any expert or legal adviser through the administrator.
- 5.2 Subject to Rules 5.3 and 5.4 below, each party shall bear its own costs of legal representation, preparing and submitting its case and of attending any hearing. No legal action may be brought to recover these costs.
- 5.3 The arbitrator may award that the co-operative shall reimburse the customer their registration fee if the customer is successful in their application. Alternatively, the arbitrator may award that the customer shall reimburse all or part of the co-operative's registration fee where the arbitrator finds that the customer has acted unreasonably and caused the co-operative unnecessary expense.
- 5.4 The arbitrator may also order one party to pay all or part of the other's costs where the former has acted unreasonably and caused the opposing party unnecessary expense.
- 5.5 These provisions for costs will not apply to any appeal to the court.

## **6 Confidentiality**



6.1 No party involved in any dispute under the rules, or CEDR or the arbitrator, shall disclose details of the proceedings to any stranger to the proceedings unless it is necessary to do so in order to enforce a binding settlement or as may be required by law. Notwithstanding the foregoing, CEDR may collate and process data pertaining to the use of the service, compile, analyse and publish statistics therefrom and monitor and review the operation of the service provided always that (save with the express consent of the parties) no personal data, privileged or confidential information shall be published.

## **7 Miscellaneous**

7.1 CEDR reserves the right to appoint a substitute arbitrator if the originally appointed arbitrator dies, is incapacitated or is, for any reason, unable to deal expeditiously with the dispute. The parties shall be notified of any substitution.

7.2 Subject to the right of either party to request the administrator to draw the arbitrator's attention to any accidental slip or omission which he / she has power to correct by law, neither CEDR nor the arbitrator can enter into correspondence regarding an award made under the service.

7.3 Neither CEDR nor the arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules, save that the arbitrator (but not the administrator) shall be liable for any wrongdoing on his / her own part arising from bad faith.

## Schedule 1 – Registration Fees

1. The case fee of £550 plus VAT applies and is payable by the parties as set out below:
  - a. co-operative £500 plus VAT
  - b. Consumer £50 plus VAT
2. In the event of a meeting or inspection (see rule 6.3), the party requesting the meeting or inspection will bear the costs of the meeting or inspection, including an additional case fee of £500 plus VAT (£350 plus VAT for the arbitrator and £150 plus VAT for CEDR), and any travel expenses of the arbitrator at reasonable cost, plus the cost of any facilities for the hearing or inspection. In the event that the customer has requested the meeting or inspection the parties are jointly and severally liable for such costs.